

**PAYMENT OF STAMP DUTY BY BANK CUSTOMERS: COMMENT ON
THE CELEBRATED CASE OF *STANDARD CHARTERED BANK NIGERIA
LTD V. KASMAL INTERNATIONAL SERVICES LTD & 22 ORS,*
UNREPORTED SUIT NO.: CA/L/437A/2014 DELIVERED IN APRIL 2016.**

*Hon. Justice Kingsley Chukwudi Igbokwe
Judge, LAWSA High Court, UNN.*

INTRODUCTION

The directive from the Central Bank of Nigeria (CBN) to all commercial banks and DMBs (Deposit Money Banks) with immediate effect to commence the charging of N50 per transaction in acknowledgment of services rendered in respect of electronic transfers and teller deposits from N1,000 and above may not be unconnected with the decline in the price of crude oil (nation's major source of income) in the international market which has adversely affected the economy. Moreover, revenue from non-oil sector has not been able to mitigate the steady plunge of the economy in recent time. One of the major sources of the non-oil revenue for the nation is taxes and levies. The directive by the CBN was clearly a calculated attempt to shore up the revenue of the nation. However, this attempt has been frustrated by the Court of Appeal, Lagos Division which dashed their hopes of realising fortune for the Federal Government at the expense of bank customers to the wall. The celebrated judgement has indeed brought some sought of relief to bank customers.

FACTS OF THE CASE

The subject of the Appeal was commenced against several defendants by the 1st Respondent, an agent of the Nigerian Postal Service (the 22nd Respondent), to enforce compliance by commercial banks with the purported provisions of the Stamp Duties Act and consequently the payment of stamp duties on deposits and electronic transfers. By an Amended Originating Summons, the 1st Respondent sought against the appellant, all the Commercial Banks in Nigeria (2nd -21st Respondents), NIPOST and the 23rd Respondent for a number of reliefs, one of which was:

A Declaration that, upon a community reading and construction of the provisions of the Stamp Duties Act 2004, the NIPOST Act 2004 and the Federal Government of Nigeria Financial Regulations 2009, and the Agency Agreement between the Plaintiff and the 23rd Defendant, the 1st to 22nd Defendants are obliged to deduct and remit to the 23rd Defendant through the Plaintiff, a sum of 50 Naira as stamp duty on all receipts, by electronic transfer and/or teller deposit, of monies from N1,000.00 (One Thousand Naira) upwards (eligible transaction) made into accounts operated in all their branches until the termination date of the said agency.

The trial Court granted the reliefs sought by the Plaintiff, the now 1st Respondent on Appeal. Dissatisfied with the judgement, the Appellant filed a Notice of Appeal thereof urging the Court to set aside the judgment in its entirety and dismiss the 1st Respondent's case. In response to the 1st Respondent's claim, the Appellant filed a Notice of Primary Objection and urged the Court below to strike out the suit on the grounds of lack of jurisdiction to entertain the suit. The reason being that the 1st Respondent lacked the *locus standi* to prosecute the action on behalf of the 22nd respondent (NIPOST) and non-disclosure of cause of action in the Court below. The

Court of Appeal considered that in compliance with Section 111 of the Stamp Duties Act 2004, it is only the Attorney-General of the Federation who has the exclusive power to institute an action in the event of any infraction of the Stamp Duties and NIPOST Act, since the 1st Respondent lacked the *locus standi* to institute the said suit, the trial court consequently lacked the jurisdiction to entertain the suit FHC/18/1462/2013. Another ground of preliminary objection raised by the 1st Respondent was that the Court of Appeal should strike out the substantive appeal and the several others on the ground that the issues in the appeal had become academic and hypothetical in view of the subsequent judgment of the Federal High Court in the suit No.: FHC/L/1710/2014 — *KASMAL INTERNATIONAL SERVICES LTD V. CBN* delivered on 17th April, 2014 on which the Central Bank of Nigeria founded its Circular of 15th January, 2016 wherein it directed with immediate effect the commencement of charging of N50 per eligible transacts by DMBs and Financial Institutions in acknowledgement of services rendered in respect of electronic transfers and teller deposits from N1,000 and above.

The Court of Appeal, in the landmark decision held, *inter alia* that in the absence of any express provision to the contrary, (by way of amendment to the Stamp Duties Act) the provisions of the schedule of the Stamp Duties Act, especially *item 4* clearly show that documents which evidence receipts of deposits by customers of a bank, such as the Appellant, are exempted from the payment of Stamp Duties. As such there is no obligation thereupon to deduct and remit stamp duty on deposits or transfers, either as erroneously found by the court below, or at all. The Judgement of the Federal High Court delivered on February 17, 2014 by C.J. Aneke, J. in suit No.: FHC/L/CS/1463/3013 was set aside and accordingly struck out for being incompetent. The appellant was awarded costs of N50,000 against the 1st Respondent.

ISSUES DISTILLED FROM THE GROUNDS OF APPEAL

The first issue before the Court of Appeal was whether the 1st Respondent had the *locus standi* to institute the matter *ab initio* in the trial Court. It was observed that in the absence of any statutory provision conferring upon the 22nd Respondent (NIPOST) the alleged powers in question, the 1st Respondent lacked the *locus standi* to institute the suit, in that its so-called principal (22nd Respondent) could not have validly instituted and maintained the action. The Court of Appeal could not find in the *copus* of law where NIPOST as an institution of the Federal government was given the right to sue in the event of any infraction of the Stamp Duties Act. Therefore, since such a law was non-existent, the agent could not exercise that which does not exist on behalf of its principal.

The second issue was whether there existed a cause of action for which the 1st Respondent could have brought the suit. It was obvious from the 1st respondent's averments contained in the affidavit in support of motion that the 1st Respondent's cause of action allegedly derived from the purported amendments of the Stamp Duties and NIPOST Acts are non-existent. Thus, there could not have been any justifiable basis upon which the Court below would have validly held that the 1st Respondent's suit disclosed a cause of action against the Appellant. What is more, by the provision of Section III of the Stamp Duties Act, all duties, fines, penalties and debts due to the Government of the federation imposed by the Act shall be recoverable in a summary manner (exclusively) in the name of the Attorney-General of the federation (or the State as the case may be). As such, there is no any specific provision in the said Act

conferring power upon the 22nd Respondent to collect the sum of N50 for every N1000 and above deposited in the banks by way of teller deposits or electronic fund transfers. Hence, no valid cause of action exists for the determination in favour of the 1st Respondent at the trial Court.

On the third issue, the question as to whether the 1st Respondent, an agent of a disclosed principal can institute an action before the court below in its own name. It was very clearly deposed to by the 1st Respondent in the affidavit thereof that it instituted the action as an agent of the 22nd Respondent in pursuance of the agreement of both parties. The Court of Appeal reasoned that the right to sue for the enforcement of the provisions of the NIPOST and Stamp Duties Acts can only be vested in NIPOST, if at all, the principal of the 1st Respondent. Thus, that the 1st Respondent cannot by itself institute and maintain the suit aimed at protecting the interest and rights its principal (22nd Respondent) without bringing such an action in the name and on behalf of the said principal thereof.

On the fourth issue, the lower Court held that the said Schedule 4 is in conflict with the provisions of Section 90 of the Stamp Duties Act and therefore, null and void. Under Section 3 of the Stamp Duties Act, it is expressly provided that stamp duties to be collected in pursuance of the provisions of the Act shall be subject to the exemptions contained therein which brings Item 4 of the Schedule (to the Act) under the heading "Exemptions" and the exemptions provided in Item 4 have been duly recognised by Section 3 of the said Act which the lower court failed to take into cognizance. Clearly, provisions of a schedule to an Act are duly recognised to be an integral part of the enabling Act, provided there is no conflict between the provisions of the Act and the Schedule thereto. See *NNPC vs. FAMFA OIL LTD* [2012] 17 NWLR (PT. 1328) 148. The Court of Appeal eventually held that the provisions of the schedule to the Act, most especially Item 4 in question, are indisputably part of the substantive provisions of the Stamp Duties Act itself, thus cannot by any stretch of imagination, be said to be in conflict or at variance with any other provision of the Act, Section 90 inclusive.

The fifth and final issue raised the question of whether or not the Court below was right in coming to the conclusion that electronic fund transfer and teller deposits are receipts within the contemplation of the provisions of the Stamp Duties Act. The Court emphasised that the best way of proving payment of money in to a bank account is by the production of a bank teller or an acknowledgment showing on the face thereof that the bank has indeed received the payment; relying on *Sale vs. BON Ltd* [2006] 6 NWLR (Pt. 976) 316 where the Supreme Court had used both bank teller and receipt interchangeably. The Court of Appeal held that the provisions of the schedule to the Stamp Duties Act, especially Item 4 clearly showed that documents which evidence receipts of monetary deposits by a bank, such as the Appellant, are exempted from the payment of Stamp Duties.

COMMENT

Even after this decision, the policy of deducting N50 for each deposit and transfer transaction continued unabated. Not until Retail Supermarkets Nigeria Limited brought a fresh action against Citibank and Central Bank of Nigeria suit No.: FHC/L/CS/126/2016 where the plaintiff challenged the collecting of N50 surcharge for every N1,000 transaction. The trial Court relying strongly on the Court of Appeal decision in *Standard Chartered Bank Nigeria Ltd* case gave ground breaking

declarations, one of which was that the Central Bank Circular was inconsistent with the Court of Appeal's decision thereby declaring the Circular null and void. Many have argued in some quarters that the decision subsisting, it will not affect the directive of the CBN. Probably because, the action was not a class action or may be an injunction has not been issued to that effect. Banking customers have been moaning since the commencement of the implementation of the dreaded Directive by the CBN. The Circular is perceived to be insensitive, illegal, contrary to banking policies and against the masses. Nevertheless, the disregard for the decisions of the Courts, should accompany attendant consequences. From the judgements, strong worded judicial pronouncements have come at the expected time and punitive measures should be meted out against any financial institution that may want to go against it. The Courts have issued directives, which the CBN and other financial institutions are expected to abide by them. No more illegal deductions by any means whether as stamp duty or otherwise. The interests of the masses, as has been highlighted by the Courts, prevail as against administrative directives from whatever institution.

Moreover, it is a trite principle of law that when a suit discloses no cause of action the court is devoid of jurisdictional competence to entertain and adjudicate upon the suit. For instance, the appellant's so called cause of action was derived from the alleged amendments to both the NIPOST Act and the Stamp Duties Act in question, which purportedly empowered the 22nd Respondent (NIPOST) and by extension the appellant with the power to collect the sum of N50 for every sum of N1,000 and above deposited in banks (by way of teller deposits or electronic fund transfers) were non-existent. Therefore, the whole basis of the action lacks merit. One cannot put something on nothing and expect it to stand.

CONCLUSION

Under the Nigerian adversarial/ Judicial System vis-à-vis the Constitution, the right to justice to be administered by the courts is not an abstract justice as conceived by the judge, but justice according to law. *A fortiori*, as judicial officers, the judicial powers imposed upon judges by the constitution and the law are undoubtedly enormous. By the nature thereof, the functions of a judicial office call for a very high sense of duty, responsibility, commitment and great intellect. The insightfulness of the case was not least expected especially as the nature of the suit demanded adequate pronouncement to stem overreaching financial institutions against arbitrary fixing of rates, interests, stamp duties, etc. at their whims and caprice. Again, the appropriate and designated body to commence matters, especially as it affects the citizenry should not be disturbed, rather than mere busybodies flocking the Court for redress when in fact, such civil rights do not exist. For *Section 6(6)(a)* of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) has imbued the Courts with jurisdiction only to the extent where there is determination of any question as to the civil rights and obligation of that person. Once the purported civil rights are non-existent, the claimant thereof has no cause of action, and therefore to some degree lacks the *locus standi*, and the Court in that regard automatically lacks the jurisdiction to adjudicate on such non-existent civil rights.